

any promotional or discounted offering of basic local exchange service."<sup>74</sup>

Several parties have opined that all promotions must be passed on to resellers.<sup>75</sup> Section 252(d)(3), however, requires wholesale rates to be established "on the basis of retail rates"; it imposes no mechanistic, express requirement with respect to promotional rates.

As discussed in Ameritech's Comments, excluding promotions from wholesale requirements will encourage incumbent LECs to develop promotions and, at the same time, stimulate resellers to develop their own pricing and discount strategies.<sup>76</sup> On the other hand, if incumbent LECs are required to pass directly through every promotion subject to a wholesale discount, they would, in effect, be perpetually competing with themselves, because resellers automatically would become the unintended beneficiaries of the promotion. Incumbent LECs thus would be discouraged from offering price promotions to their retail customers, and customers would lose many of the significant

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<sup>74</sup> Mich. Comp. Laws § 484.2357(3)(1).

<sup>75</sup> See, e.g., AT&T Comments at 82; MCI Comments at 86.

<sup>76</sup> See Ameritech Comments at 56-57.

benefits of competition.<sup>77</sup> Discouraging price competition for local service runs the risk of creating another pricing oligopoly like that which exists for long distance service today. In addition, Ameritech has committed to lower the wholesale rate to prevent a price squeeze if a promotional offering falls below the corresponding wholesale rate.<sup>78</sup>

**B. The Commission's Rules Should Not Require Resale Of ICBs Or Grandfathered And Sunsetted Services.**

Several commenting parties urged the Commission to adopt an overly expansive view of the services of incumbent LECs that must be made available for resale on a wholesale basis.<sup>79</sup> The 1996 Act's wholesale mandate, however, is limited to telecommunications services. Telecommunications is expressly defined as: "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."<sup>80</sup>

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<sup>77</sup> The Office of Ohio Consumers' Counsel has correctly recommended that short promotions not be required to be made available for resale. See Office of Ohio Consumers' Counsel Comments at 36.

<sup>78</sup> See generally, ICC Wholesale Docket, Docket No. 95-0458.

<sup>79</sup> See, e.g., AT&T Comments at 76-78 (demands that incumbent LECs make all services they offer available for wholesale resale, including "contracts" without specification of what the contract may be for); TRA Comments at 17 (all services offered by the incumbent LEC without limitation).

<sup>80</sup> 47 U.S.C. § 153(a)(48).

The 1996 Act also defines the term "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."<sup>81</sup>

The plain language of the 1996 Act and its legislative history indicate Congress's intent that the term telecommunications, and consequently telecommunications services, be narrowly construed as the transmission of unaltered information. "Telecommunications" should not be broadly defined to include other services that do not involve the transmission of information.<sup>82</sup>

AT&T also erroneously contends that individual customer based ("ICB") services should be required to be made available for resale.<sup>83</sup> ICBs are not the type telecommunications services, which must be made available for resale under the 1996 Act. Only telecommunication services that are provided "directly to the public" need to be offered for resale. ICBs are, by definition,

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<sup>81</sup> 47 U.S.C. § 153(a)(51).

<sup>82</sup> For example, under the statutory language it is not possible to conclude that a calling card, which is simply a billing option provided to a customer, is a telecommunications service. Similarly, the statutory definition does not support the broad application urged by AT&T to any "contract," regardless of the nature of the underlying service.

<sup>83</sup> See AT&T Comments at 77 n.113.

offered on a contract-type basis to a particular customer, rather than being made generally available to other prospective customers.<sup>84</sup> The arrangements are customer and address specific. As such, an ICB is not offered "directly to the public or to such classes of users as to be effectively available directly to the public."<sup>85</sup>

Even if ICBs that are uniquely designed for a particular customer could be considered a telecommunications service, which they are not, any requirement that an ICB service be subject to resale must be limited to the particular subscriber of the ICB. This will ensure that the customer meets the specific terms and conditions of the ICB, which resulted from either unique cost characteristics of the customer for whom the ICB was designed or the particular circumstances under which the ICB was negotiated. Subscriber-class restrictions are specifically recognized by section 251(c)(4)(B) as a reasonable and nondiscriminatory limitation on the availability of services for resale.

Several parties attack the concept of grandfathering or sunseting services as a means for a provider to facilitate the

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<sup>84</sup> See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, 6810 (1990); see also Public Notice, "Common Carrier Bureau Restates Commission Policy on Individual Case Basis Tariff Offerings," DA 95-2053 (released Sept. 27, 1995).

<sup>85</sup> See 47 U.S.C. § 153(a)(51).

withdrawal or elimination of an existing service.<sup>86</sup> The use of grandfathering or sunseting provisions has long been recognized by states as a reasonable means for a provider to discontinue a service without adversely affecting existing customers.<sup>87</sup> Any provider is entitled to the right to determine what goods, services, or products it will offer. The Commission should not arbitrarily deny states the ability to permit providers, under reasonable terms and conditions, to facilitate withdrawal of obsolete technology, services for which there is little or no retail demand, or services for which there are alternative replacements available.<sup>88</sup>

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<sup>86</sup> See AT&T Comments at 76-78; DOJ Comments at 5; see also PUCO Comments at 61-62 (burden on incumbent LEC to prove service withdrawal is in the public interest).

<sup>87</sup> See, e.g., Ameritech Michigan's MPSC Tariff 20R, Part 2, Section 2, Sheet 7; Ameritech Ohio's PUCO Tariff 20, Part 20, Section 5, Sheet 1; PUCO Case Nos. 81-436-TP-AIR, Apr. 21, 1982 (two-party-residence service); 93-187-TP-ATA, Feb. 25, 1993 (optional off-peak toll); and 94-831-TP-ATA, Oct. 27, 1994 (multiple call option).

<sup>88</sup> For example, Ameritech is always reviewing its retail services to determine what services should be withdrawn, grandfathered, or sunsetted. Some of the criteria used in this review (and some of the services identified on a preliminary basis) include: services that have few or no existing customers (e.g., elements of private line 6005 channel service); services that have been replaced by new services (e.g., Ameritech Value Calling Plan, which was superseded by Value Link Plus); services that have little or no market demand (e.g., distinctive ringing); or obsolete services (e.g., basic 911 service, which has been superseded by enhanced 911 service).

To allay concerns that the process of grandfathering or sunseting will be used as a means to discriminate against resellers, any requirement that grandfathered or sunsetted services be made available for resale should be limited to making them available to resellers under the same terms and conditions, and the same rates (including the terms of grandfathering), for purposes of serving the existing customer at the existing locations. This nondiscriminatory proposal eliminates any legitimate objection to the withdrawal of a service. The grandfathered or sunsetted service will be unavailable to the incumbent LEC's new retail customers and customers served by resellers on the same nondiscriminatory basis and will not affect the reseller's ability to provide service to customers who currently are using the grandfathered or sunsetted service.

#### **VII. CONCLUSION**

The Commission must balance the policies of encouraging efficient local competition -- ranging from full facilities-based competition to resale -- and maintaining universally available quality services at affordable rates when prescribing federal implementing regulations, including pricing standards. As demonstrated above, viable facilities-based local competition can emerge without federal micromanagement of the negotiations process. The Commission therefore should resist requests to

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promulgate excessively detailed federal regulations or pricing standards that fail to allow the recovery of relevant costs.

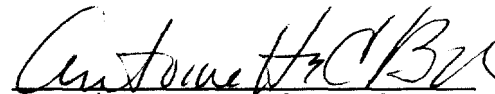
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**APPENDIX**  
**PROPOSED FEDERAL REGULATIONS**  
**FOR IMPLEMENTATION OF LOCAL COMPETITION**

**SUBPART \_\_\_\_ -- Duties of All Telecommunications Carriers**

Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

**SUBPART \_\_\_\_ -- Duties of All Local Exchange Carriers**

**\_\_\_\_ Resale**

(a) Subject to reasonable and nondiscriminatory restrictions as States may permit, each local exchange carrier has the duty not to prohibit, and not to impose any unreasonable or discriminatory limitations on, the resale of its telecommunications services.

(b) In determining the reasonableness of any limitations on the resale of telecommunications services by local exchange carriers, States shall consider whether the benefits to the public of such limitations outweigh any harm posed by such limitations.



\_\_\_ Reciprocal Compensation Arrangements

(a) Each local exchange carrier has a duty to enter into reciprocal compensation arrangements for the transport and termination of telecommunications services, but only in connection with the exchange of the local traffic from the subscribers of another telecommunications carrier.

(b) Compensation arrangements for the provision of exchange access shall be governed by prevailing access tariffs regardless of from whom such traffic is received.

**SUBPART \_\_\_ -- Duties Imposed on Incumbent LECs**

\_\_\_ Interconnection

(a) Upon request, each incumbent local exchange carrier shall provide to requesting telecommunications carriers interconnection with such incumbent local exchange carrier's network at any technically feasible point for the transmission and routing of telephone exchange service and exchange access, at rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Such interconnection shall be at least equal in

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quality to that provided by the incumbent local exchange carrier to itself, any subsidiary or affiliate, or any other party.

(b) The following points of interconnection shall be presumed technically feasible:

(1) An arrangement whereby either carrier may interconnect its end or tandem office (or equivalent) to the end or tandem office of the other carrier through transport facilities or services between their respective offices purchased by the requesting carrier from the other carrier; and

(2) An arrangement whereby either carrier may interconnect its end or tandem office (or equivalent) to an end or tandem office of the other carrier through transport facilities or services between their respective offices provided by the requesting carrier or obtained by it from a third party.

(c) For purposes of this section, equal in quality means the same or equivalent interface specifications and transmission parameters provided by the incumbent local exchange carrier to itself.

\_\_\_ Access to Network Elements

(a) Upon request, each incumbent local exchange carrier shall provide to requesting telecommunications carriers, for the provision of telecommunications services, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(b) A network element obtained under this section may be used by the requesting carrier, in combination with its own facilities, only to provide a telecommunications service.

(c) To the extent unbundled network elements are bundled or otherwise combined in a manner that is equivalent to a service made available for resale, the resale pricing provisions of \_\_\_ should be applicable.

(d) Upon request, all incumbent local exchange carriers, at minimum, shall provide to requesting telecommunications carriers for purposes of providing a telecommunications service:

(1) local loop transmission from the main distributing frame or its equivalent in the central office to the network interface at a customer's pre-

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mises, unbundled from local switching or other services;

(2) local transport from the trunk side of the wireline local exchange carrier switch, unbundled from switching or other services;

(3) local switching unbundled from transport, local loop transmission, or other services;

(4) nondiscriminatory access to signaling systems and databases used by a telecommunications carrier to route traffic to and from an incumbent local exchange carrier's network;

(5) access to other network elements on an unbundled basis pursuant to the negotiations required by Section 252 of the Act, including responses to good faith requests for unbundled network elements.

(e) An incumbent local exchange carrier is required to provide a network element only if the requesting telecommunications carrier establishes that its failure to obtain such network element would impair the requesting carrier's ability to provide the telecommunications services it seeks to offer. For purposes of this subsection, impair means that the function, features,

capacity, or information supplied by the requested network element cannot reasonably be duplicated by the requesting carrier, or obtained from another source or existing services of the incumbent local exchange carrier including access or resold services, and the failure to obtain such network element would materially diminish the quality of such telecommunications service.

(f) In the case of a proprietary network element, an incumbent local exchange carrier is required to provide unbundled access to such element only if the requesting telecommunications carrier establishes that access is necessary for the requesting carrier to provide a telecommunications service. For purposes of this section, necessary means that the requesting carrier could not provide the telecommunications service without access to such proprietary network element.

\_\_\_\_ Resale at Wholesale Rates

(a) Subject to reasonable and nondiscriminatory restrictions as States may permit, each incumbent local exchange carrier has an obligation to offer for resale, at wholesale rates, any telecommunication service

provided by such carrier at retail to subscribers who are not telecommunications carriers.

(b) Nothing herein shall preclude a incumbent local exchange carrier from offering a single wholesale rate for a class of services based on the weighted average of the various retail rates offered for such class of service.

\_\_\_ Collocation

(a) Each incumbent local exchange carrier has the obligation to provide physical collocation of equipment necessary for interconnection or access to unbundled network elements pursuant to and in accordance with the requirements set forth in this section.

(b) Incumbent local exchange carriers shall provide for physical collocation of equipment necessary for interconnection for the transmission and routing of telephone exchange service or exchange access, or for access to unbundled network elements, except that such incumbent local exchange carriers may offer virtual collocation instead of physical collocation, upon a finding by the relevant State commission, that physical

collocation is not practical for technical reasons or space limitations.

\_\_\_ Technical Feasibility

(a) Interconnection and access to network elements provided pursuant to §§ \_\_\_\_\_ and \_\_\_\_\_ respectively shall be presumed technically feasible at a particular point if an incumbent local exchange carrier using the same or similar network technology is currently providing, or has successfully provided in the past, interconnection or access to network elements at that particular point.

(b) The carrier claiming that interconnection or access to network elements at a particular point would risk harm to the network or would be technically infeasible shall have the burden of presenting specific and detailed justification to rebut the presumption established by subsection (b).

\_\_\_ Good Faith Requests

(a) Negotiating carriers or any State may establish a good faith request process for purposes of an incumbent local exchange carrier responding to new re-

quests by telecommunications carriers for interconnection and access to network elements on an unbundled basis.

(b) A good faith request, at minimum, shall include a commitment by the requesting carrier to order the network elements or interconnection in the quantity requested or to reimburse the incumbent local exchange carrier for the costs incurred in responding to such request. Notwithstanding the requirements of this section, no requesting carrier shall be required to reimburse an incumbent local exchange carrier for the costs incurred in a response when such response is not provided in accordance with the requirements of this part.

     Availability of Agreements to Other Telecommunications Carriers

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement or statement approved by a State commission to any other requesting telecommunications carrier upon the same terms and conditions as provided in the state-approved agreement or statement. The right of a telecommunications carrier to take such interconnection, service, or network element from an existing state-ap-



proved interconnection agreement is conditioned upon such carrier taking the requested interconnection, service, or network subject to all the applicable terms and conditions contained in the State-approved interconnection agreement, unless otherwise agreed between the parties.

**SUBPART \_\_\_\_ -- Pricing and Cost Methodologies**

\_\_\_\_ Charges for Interconnection and Network Elements

(a) Charges for interconnection and network elements shall be based on the costs of the providing carrier and may include a reasonable profit.

(b) For purposes of this section, cost includes the direct incremental costs of providing the interconnection or network element and a reasonable allocation of the incumbent local exchange carrier's joint, common, and residual costs.

\_\_\_\_ Wholesale Rates

For purposes of § \_\_\_\_, wholesale rates shall be equal to retail rates charged by the incumbent local exchange carrier to non-carrier subscribers less any marketing, billing, collection, and other costs avoided

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by the incumbent local exchange carrier by not performing retailing functions. For purposes of this section, the marketing, billing, collection, and other costs incurred by the incumbent local exchange carrier in offering services for resale are not avoided costs.

\_\_\_ Reciprocal Compensation

(a) Just and reasonable charges for the transport and termination of traffic, at minimum, shall allow recovery by each carrier of the direct incremental costs associated with the transport and termination of calls that originate on the network facilities of the other carrier plus a reasonable allocation of joint and common costs.

(b) States shall not mandate reciprocal arrangements that fail to afford mutual and reciprocal recovery of costs by both carriers.

(c) Negotiating carriers may waive mutual recovery of costs through arrangements such as bill-and-keep.

Certificate of Service

I, Mark E. Kallal, hereby certify that a copy of the foregoing Reply Comments of Ameritech was sent this 30th day of May 1996, first class mail, postage prepaid, to the parties listed on the attached pages.

A handwritten signature in cursive script, appearing to read 'Mark E. Kallal', written over a horizontal line.

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